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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE**

KOMAL RATTAN,
Respondent,
v.
ABHIJIT PRASAD,
Appellant.

A155472

(Alameda County
Super. Ct. No. VF07356209)

MEMORANDUM OPINION ¹

On May 1, 2019, after having solicited and considered briefing on whether attorney Elana Thibault may represent appellant Abhijit Prasad in this appeal following her disqualification by the trial court (see California Rules of Professional Conduct, rule 1.9), we concluded the disqualification prohibits Thibault from representing Prasad in any dispute with respondent, including this appeal. We directed Prasad to show cause why the notice of appeal filed by Thibault on his behalf should not therefore be stricken and the appeal dismissed. In addition to the possible dismissal of this appeal, we specifically directed Prasad to state whether “Thibault’s access to and possession of

¹ We resolve this case by a memorandum opinion pursuant to California Standards of Judicial Administration, section 8.1.

respondent's confidential information during her representation of appellant has so tainted the proceedings as to preclude meaningful review in this court." Prasad, Thibault and any attorney who was going to represent Prasad were to state in a declaration that Thibault did not participate or assist in preparation of Prasad's response to our order and "will not assist or participate in the prosecution of this appeal should it go forward."

In response, Prasad filed a declaration stating that (1) he is aware of the July 19, 2018 disqualification order; (2) it is his understanding that the notice of appeal Thibault filed in this matter was to perfect her own appeal from the disqualification order and the trial court's contemporaneous award of sanctions against her; and (3) Thibault "will not be representing" Prasad in relation to the order granting a writ of possession, also issued at the July 19, 2018 hearing, which is the only order Prasad purports to challenge in this appeal. Absent from Prasad's declaration is any affirmation that Thibault did not assist in its preparation. Nor has Thibault complied with our order that she attest under penalty of perjury that she did not assist or participate in Prasad's response to the order to show cause. Prasad's response provides no basis for us to conclude the notice of appeal filed by disqualified counsel should not be stricken.

Thibault appears to concede, correctly, that the disqualification order precludes her from representing Prasad in this appeal. Her position, rather, is that she may pursue this appeal *on her own behalf*, to challenge the disqualification and sanctions orders issued against her. She may not.

Thibault did not file a separate notice of appeal ("the better practice," see *Moyal v. Lanphear* (1989) 208 Cal.App.3d 491, 497) and did not include herself as an additional appellant in Prasad's notice of appeal. We are therefore without jurisdiction to review the rulings against her. (*Calhoun v. Vallejo City Unified School Dist.* (1993) 20 Cal.App.4th 39, 42; accord *People v. Indiana Lumbermens Mutual Ins. Co.* (2014) 226 Cal.App.4th 1, 10-11 (*Indiana Lumbermens*); *In re Marriage of Knowles* (2009) 178 Cal.App.4th 35, 38, fn. 1; *Taylor v. Varga* (1995) 37 Cal.App.4th 750, 761, fn. 12.) Nor, for several reasons, may we review those rulings under the aegis of her former client's

appeal. Prasad has no standing to challenge the sanctions award on appeal (*Indiana Lumbermens, supra*); the sanctions award is not appealable because it does not exceed \$5000² (Code Civ. Proc., § 904.1, subd. (a)(12)); Prasad acknowledges he is not attempting to appeal the disqualification order; and in any event, as observed above, his notice of appeal must be stricken because Thibault was disqualified from representing him when she caused it to be filed.

Under these circumstances, the notice of appeal is stricken and the appeal dismissed. We therefore need not also consider whether Thibault's access to and possession of respondent's confidential information while she represented Prasad has so tainted the proceedings as to preclude meaningful review.

DISPOSITION

The appeal is dismissed. Respondent is to recover costs on appeal.

² Despite an apparent error in a minute order, the record establishes that the court imposed sanctions of \$5,000, not \$6,000.

Siggins, P.J.

WE CONCUR:

Petrou, J.

Wiseman, J.*

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* Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.